1946.

Examined

K

File No. S. Dwr. 6/46.

Legal DEPARTMENT

A. BRANCH

P 60 (E) / 1946

Subject:— Suits Dharwar.

Civil Suit No. 396 of 1945.

Raghvendra alias Shrinivas Gururao Jahagirdar of Hubli. —— Pltff.

Vs.

The Province of Bombay —— Deft.

claim Rs. 205/-

Re: For a declaration that Govt has no right to resume by levy of full assessment the Starred Inam lands at the villages of Talvai and Kurdapur.

Civil Appeal No. 339 of 1947

)

File No. S. Dwr. 6/46.

Std. Scott. Bldy M-B

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Legal Department File No. S. NWR. 6/46.

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		vs.	
		Province of B'bay.	
		Claim — Rs. 205/.	
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G. R., G. D., No. 2408, dated 22-6-23.] Sectt. 78A a.

DOCKET SHEET (B)

Subject:—Dharwar civil Suit No 396 of 1945 Raghvendrarao alias Shrinivas Gurnao Jahagirdar versus The Province of Bombay.

File No. 5054

Legal **DEPT.**

A **BRANCH.**

References:—

Date.	To whom sent.	Notes and instructions.
4/6 4/6	Sr Dy	Submitted. The next date in the suit was 7th June 1946 (vide D.G.P.'s letter 23-5-1946 at slip H below). The D.G.P. must have applied for extension of time on that date. He may therefore be requested to state the next date. A memo for the purpose is put up below for signature.
2nd 5/6		
	A.S. 8/6	Resubmitted after issue. Await D.G.P.'s reply till 17th inst.
2nd 12/6	A.S. 12/6	

× Issued under No. 4231 dtt. 8/6/46 8/6

In this suit the plaintiff contends that the Government has no right to resume by the levy of full assessment the starred Inam lands in the villages of Talwai and Kurdapur and that he, as the adopted son of Laxmibai, the widow of the last Inamdar is entitled to hold the lands free of assessment. These lands were adjudicated by the Inam Commissioner under Act 11 of 1852 and were continued in perpetuity to the lineal male descendants of Raghunatharao and Krishnarao the original grantees. The plaintiff who is a stranger to the Inamdar family was adopted in 1942 by Laxmibai widow of Gururao Shrinivasrao who was a junior member of the family and he claims to hold the lands free of assessment by virtue of that adoption. The suit is defencible. All Inam lands adjudicated under Act 11 of 1852 are restricted as to continuance to the lineal male descendants alone and succession by adoption is not recognised. Government's sanction was not obtained for the plaintiff's adoption which is therefore unauthorised. Government was therefore justified in resuming the suit lands by the levy of full assessment. Sanction may be accorded to the defence of the suit on the lines of the appended brief and written statement.

RM
26/7/46

A A ZA RE 26/7
[RCA] DS AR, 27/7
Secy R-D 27.7.46

X 2624
29-7-46

5

In the Court of Civil Judge (Senior Division)
Dharwar.

Civil Suit No. 396 of 1945

Reghavendra alias Shrinivas Gururao
Jahagirdar - - - - - Plaintiff

Vs.

The Province of Bombay - - - - - -- - -- Defendant.

The following is the written statement of behalf of the Province of Bombay.

1. The plaintiff's claim is denied in toto.

2. With regard to the allegations in paragraph 3 of the plaint it is denied that the plaintiff is the lineal male descendant of Krishnarao. It is submitted that the palintiff is a stranger to the Inamdar family and his adoption by Laxmibai is invalid and unauthorised without the prior sanction of Government.

3. The allegations in paragraph 4 of the plaint are denied. The plaintiff is not entitled to hold the suit lands free of assessment and the orders passed by the Government in G.R., R.D. No. 861/39, dated the 15th December 1944 are perfectly legal. It is further submitted that the fact that there are in existence other lineal male descendants of the original grantee does not entitle the plaintiff to hold the suit lands as aforesaid. The plaintiff's contentions to the contrary are incorrect and hence denied.

4. The plaintiff is not entitled to any relief. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Dharwar

I District Government Pleade: Dharwar, do hereby declare that what is stated in paragraphs 1 to 4 above is true according to the information received and believed to be true. This verificatio: is made at this day of 1946

District Government Pleader, Dha-

Spl.L.C.Suit No.396 of 1945.

In the Court of Civil Judge,
(Senior Division),
Dharwar.

Plaintiff:- Raghavendra alias Shrinivas Gururao Jahagirdar, of Hebli.

Versus

Defendant:- The Province of Bombay.

Claim Rs.205 for Court fees & Jurisdiction.

In this, the plaintiff begs to apply under Order 11, rule 1 of Civil Procedure Code as follows:-

1). The plaintiff has filed this suit against the Government as the adopted son of the deceased Gururao for a declaration that the defendant cannot resume the lands in suit by the levy of full assessment and for an injunction restraining Government from claiming the said assessment.

2). The defendant has contended in his written statement that the adoption of the plaintiff is invalid and unauthorised ~~without~~ having taken place without the sanction of the Government.

3). It has, therefore, become necessary for the plaintiff to be permitted to deliver the following

interrogatories to be answered by the defendant:-

i). Whether the defendant admits that Ramrao Govindrao as shown in the geneology in Sch.I with the plaint was the adopted son of Govind Rao ~~M~~ ?

ii). Whether the defendant admits that the lands of Govind Rao were continued to his adopted son RamRao, as the adopted son of Govindrao and after the said RamRao's death, they havenow been continued to his sons Krishtrao and others ?

iii). Whether the defendant ~~d~~ admits that no sanction of Government was asked for or taken to the said adoption ?

It is, therefore, prayed that the defendant - Government be ordered to answer the interrogatories. A copy of this application is given to the pleader for defendant.

Dharwar,
18-11-1946.

In this, I, Raghavendra alias Shrinivas Gururao Jahagirdar, of Hubli, do hereby state on solemn affirmation that what is stated above is true to the best of my knowledge, information and belief. In testimony whereof I have signed this at Dharwar on 18-11-1946.

Dharwar,
18-11-1946.

True copy

9

This relates to Kharwar Civil Suit No 396 of 1945 the nature of which has been explained in the note at page 41 ante. In view of Government's contention that Plaintiff's adoption by Laxmibai was invalid and unauthorised, the Plaintiff has delivered three interrogatories to be answered by Government (p 67). The replies proposed by the District Government seem correct and may be approved.

RLA
23/1/47

A.L.R 23/1
RLA 23/1.

Suits :

Dharwar.

For a declaration that Government has no right to resume by levy of full assessment the starred Inam lands at the villages of Talvai and Kurdapur.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5435.

Bombay Castle, 2nd August 1946.

Letter from the Collector of Dharwar, No. L.A.W. 462, dated the 20th May 1946—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), DHARWAR.

Civil Suit No. 396 of 1945.

Raghavendra *alias* Shrinivas Gururao Jahagirdar of Hubli .. .. Plaintiff ;

versus

The Province of Bombay .. .. .. Defendant.

Claim—Rs. 205.

Endorsement by the Commissioner, Southern Division, No. LST. 359, dated the 27th May 1946—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 5435, dated the 2nd August 1946—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P. N. MOOS,
Secretary to Government.

G. R., No. 5435, L. D., dated the 2nd August 1946.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. - -- of 1946.

Copy forwarded for information and guidance to

Submitted after time
2. File in S-Dhar /46 (new file)

13

DHARWAR CIVIL SUIT No. 396 OF 1945.

Chronological statement of facts.

The suit is for a declaration that Government has no right to resume by the levy of full assessment, the starred Inam lands at the villages of Talvai and Kurdapur (Taluka Dharwar) and for a permanent injunction restraining Government from claiming the said assessment.

2. The plaintiff was adopted on 19th July 1942 by Laxmibai, widow of Gururao Shrinivasrao Jahagirdar who was a junior member of the Hebli Saranjamdar family (For a genealogy of that family *see* Gururao *v.* Secretary of State, 19 Bom. L. R., page 117 at page 125).

p. 2 of file I.

3. On 16th June 1943, Raghunatharao, a cousin of the late Gururao, submitted a Memorial to His Excellency the Governor in Council requesting Government not to recognise the adoption of the plaintiff and praying for the suit lands to be entered in his name as being the next heir of Gururao. The Memorialist contended that Gururao had been in possession of the suit Inam lands, that the claim to these lands had been adjudicated by the Inam Commissioner under Bombay Act 11 of 1852 and they were ordered to be continued to the lineal male descendants of Ramachandrarao the first British Grantee or to the lineal male descendants of his brothers, that the plaintiff was a stranger to the Heblikar family and was not a lineal male descendant under the said adjudication, that Laxmibai had not obtained prior sanction of Government for his adoption and that therefore the adoption could not be recognised.

p. 2 of file II.

4. By Government Resolution, Revenue Department, No. 861/39, dated 15th December 1944, Government passed orders to the effect that the plaintiff as the adopted son of Laxmibai had no right to enjoy as Inam the suit lands in the villages of Talvai and Kurdapur and that they should be resumed by the levy of full assessment with effect from 1st July 1944.

5. On 27th June 1945, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 4th December 1945 he filed the suit in the Court of the Civil Judge, Senior Division, Dharwar.

Grounds of Defence.

The only question is whether the plaintiff as the adopted son of Laxmibai is entitled to hold the Inam lands free of assessment. The plaintiff contends that as the adopted son of Laxmibai he is the lineal male descendant of the late Raghunatharao and Krishnarao and therefore entitled to succeed to the lands in accordance with the Inam Commissioner's decision, dated 25th January 1858. It should however be contended that the plaintiff's claim is untenable and that the orders in Government Resolution, Revenue Department, No. 861/39, dated 15th December 1944, are perfectly legal. The claim to hold the villages of Talvai and Kurdapur was adjudicated by the Inam Commissioner under Bombay Act 11 of 1852. On 28th February 1857, the Assistant Inam Commissioner Col. Etheridge decided that these villages should be continued so long as there may remain in existence any lineal descendant of the grantee Raghunatharao *bin* Ramachandrarao. In appeal the Inam Commissioner (Major Gordon) varied the Assistant Inam

Revenue Department File No. 861/39, p. 21 put up.

Revenue Department File No. 861/39, p. 15.

Commissioner's decision and ordered that the villages should be continued in perpetuity to Raghunatharao and Krishnarao and their lineal male descendants, holding Ramachandrarao whose adoption was sanctioned by Government to be the son of Raghunatharao. Under rule 2 of schedule A to Bombay Act 11 of 1852 the Inam Commissioner's decision is final as regards the land and the interest created therein and is binding not only on the Inamdar but upon Government itself (Vasudev *v.* Collector of Poona, 10 B. H. C. R. 471 and Dattatraya *v.* Lexmana, 33 Bom. L. R. page 1418). It should be contended that the expression lineal male descendants does not include strangers adopted from outside the family unless such adoption was sanctioned by Government. This conclusion is supported by the last sentence of the Inam Commissioner's order which recognised Ramachandrarao whose adoption was sanctioned by Government Resolution, Revenue Department, No. 165, dated 22nd July 1839, to be the son of Raghunatharao. The genealogy of the family given in 19 Bom. L. R. shows that Ramachandrarao was a member of the same family and yet Government's sanction had to be obtained for his adoption by Raghunatharao. The plaintiff is not only a stranger to the Heblikar family but his adoption by Laxmibai is also unauthorised for want of Government sanction. Usually all Inams adjudicated under Act 11 of of 1852 are restricted as to continuance to the lineal male descendants alone. Succession by adoption or even collateral succession is not recognised (*see* Phadnis: Saranjams and Inams page 117 and Mahadev *v.* Secretary of State, 1 Bom. L. R. page 528).

p. 5 of file I.

2. It should therefore be pleaded that the plaintiff is not entitled to hold the lands exempt from assessment and that the order of resumption by the levy of full assessment is proper. The plaintiff has further contended that no resumption can legally be made under the terms of the Inam Commissioner's decision because there are in existence other lineal male descendants of the original grantee. This contention is also misconceived. If the decision of Col. Etheridge by which the villages in question were to be continued so long as there may remain in existence any lineal male descendants of the grantee had remained in tact it might have been open to the plaintiff to contend on the authority of 39 Bom. L. R. 1304 and 41 Bom. L. R. 882 that the estate granted was limited in its duration to the continuance to the lineal male line of the grantee. But the Assistant Inam Commissioner's order was modified in appeal by the Inam Commissioner and the grant was continued in perpetuity to Raghunatharao and Krishnarao and their lineal descendants. The change of language used in former documents must be presumed to be due to change of intention and it should be argued that the Inam Commissioner had purposely limited the grant to the family of the Inamdars. The Rule that Crown grants shall be strictly construed may be applied in all its rigour to grants of this type. It is therefore clear that the grant was limited only to the grantee and his male heirs and the mere fact that there are other lineal male descendants existing does not enable the plaintiff to hold the suit lands exempt from assessment.

3. For all these reasons therefore it should be contended that the suit fails and must be dismissed with costs.

Neo file

S Dwr /46

21-4-42

Copy applied for on 8th Nov. 1947

Sd/-
Clerk of the Court.

It was ready for delivery on 5th Dec '47

Sd/-
Clerk of the Court.

It was delivered on 11th Dec '47

Sd/-
Clerk of the Court.

1280+15-0+2

3/ -/-
-/12/-
-12/ -
-/ 3/-
-/ 1/-

4/12/-

D E C R E E

In the Court of the Civil Judge (Senior Division)
at Dharwar.

L.Suit No.396 of 1945.

Ex.1.

Plaintiff : Raghavendra alias Shrinivas Gururao Jahagirdar of Hebli, age 22, caste Brhmin, occupation vatanivahiwat, of H bli Taluka Dharwar.

versus

Defendant : The Province of Bombay.

Claim Rs. 205/- for Court fees and jurisdiction.

Presented on 4/12/1945
Registered on 4/12/1945.

The plaintiff begs to submit as follows:-

1. The properties connected with suit are as follows:-

	Name of the village	S .No.	Area.
1.	Talvai, Taluka Dharwar.	2.	10- 4.
2.	" " "	6.	3- 4.
3.	" " "	12.	9- 0-
4.	" " "	16.	16-19.
5.	" " "	18.	10-27.
6.	" " "	23.	2-29.
7.	" " "	24.	18-10.
8.	" " "	33.	31-0.
9.	" " "	42.	2-20.
10.	" " "	43.	27-31.
11.	" " "	44.	37-11.

12.	Talvai	Tal	Dharwar.	52.	31 -1
13.	"	"	"	66.	17-19-
14.	"	"	"	62.	16- 4.
15.	"	"	"	171.	13-28.
16.	Kurdapur	"	"	182.	11-28.
17.	"	"	"	14.	2-15-
18.	"	"	"	15.	19- 7.
19.	"	"	"	17.	19-15.
20.	"	"	"	28.	9-22.
					300-14-

2. The Inam commissioner's decision relating to the Inam estate of which the suit properties are a part was passed on 25th January 1858. That decision was passed in accordance with rule 1 shedule B of Bombay act No.XI of 1852. According to that decision, the villages Talvai and Kurdapur are to be continued in perpatuity to Raghunathrao and Krishnarao and their lineal male descendants.

3. The geneology relevant for the purposes of this suit is given in shedule I to this plaint. From that it will be seen that the adoptive father of the plaintiff, Gururao, is a direct descend ant of Krishnarao. Laxmibai the widow of the said Gururao duly adopted this plaintiff on 19/7/194 He has thus become a lineal descendant of Krshnarao.

4. The plaintiff submits that according to the terms of the same the lands in suit have to be continued to him free of assessment. The Government of Bombay has, however, decided in its revenue department Resolution No.861 dated 15/12/ 1944 that the lands in suit have been resumed by levy of full assessment. The plff submits that the decision is based on an incorrect application of law that the plff is not a lineal descendant of Krishnarao he is an adopted son. It is also submitted that as there was admittedly in existance some other lineal male descendants also, no resumption can be legally made under the terms of the decision of the Inam commissioner. The suit has therefore, been brought for a declaration the Government cannot claim assessment and for an injunction restraining Government from

claiming the same.

5. The cause of action arose when the Government passed resolution that the lands in suit have been resumed by levy of full assessment, that is on 15/12/44.

6. The notice as required by section 80 of the Civil Proceedure Code has been delivered to the Collector of Dharwar by Registered post.

7. As the suit is against the Province of Bombay, this court has jurisdiction to try the suit.

8. The valuation of the suit for the purposes of the Court fees is as follows:-

Rs. 200/ -/- Fixed fees for the declaration prayed in sub para 1 of the prayer column No.9.

Rs, 5/ 5/- Fixed for the injunction prayed in sub-para 2 of the prayer column No.9.

Rs.205/-/- Total.

The valuation for the purposes of the jurisdiction is the same.

9. The plaintiff prays that:-

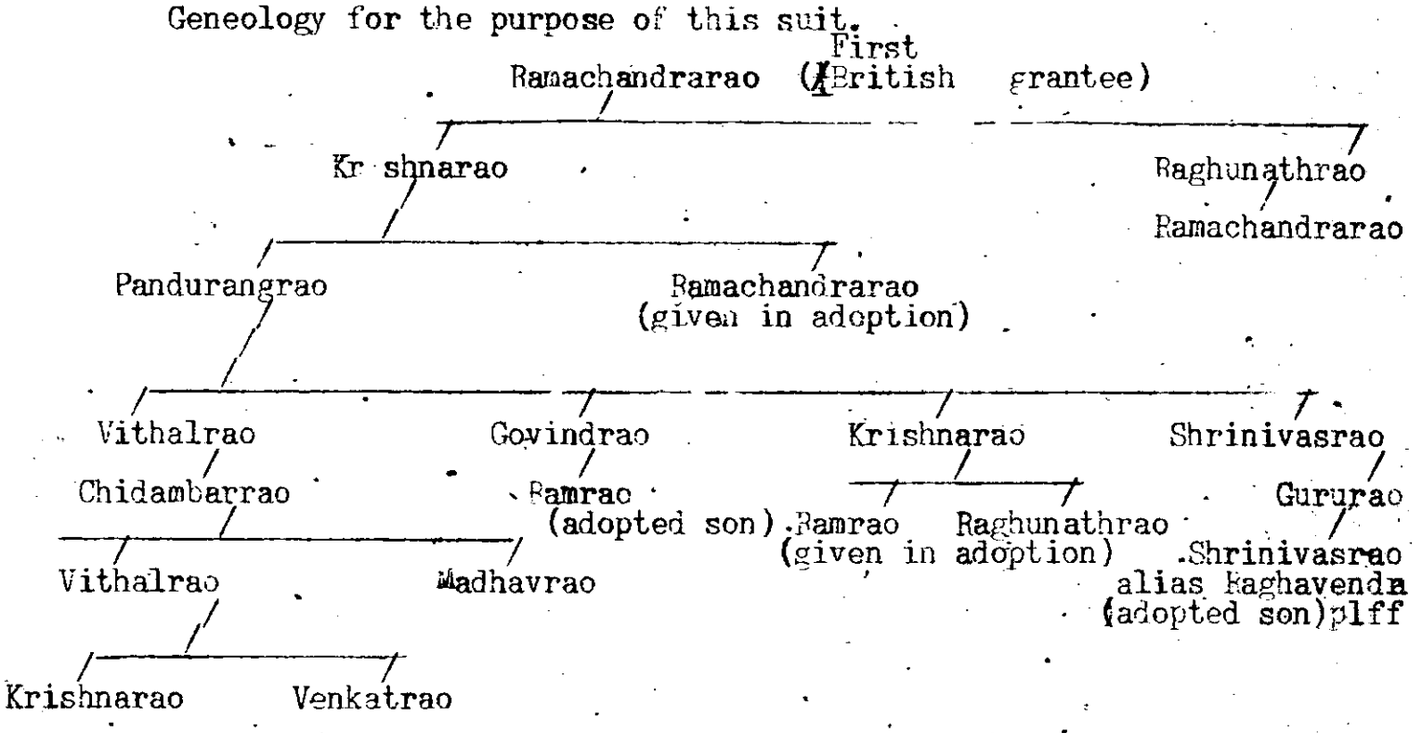
1. A declaration that the defendant cannot resume the lands in suit by the levy of full assessment be granted.

ii. A perpatual injunction be issued restraining the deft from claiming the said assessment.

iii, The costs od this suit and such other reliefs as the Court thinks fit may be awarded to the plaintiff.

Shedule I

Geneology for the purpose of this suit.



This suit comming this day before Mr.R.A.Chaugule BALLB., Civil Judge S.D.Dharwar, for hearing in the presence of Messrs.N.K.Dixit and L.R.Durg, pleaders for plff and Mr.S.R.Malapur, pleader for deft., it is hereby ordered and decreed as under:-

The suit is dismissed. The plff shall pay the costs of the deft, and shall bear his own. The value of the subject matter for pleaders fees is Rs. 2500/-

Bill of Costs

PLAINTIFF		DEFENDANT	
1. Plaint Ex.1.	Rs. 19/ 4/-	1. Applications Exs. 26 to 30, 34, 37, 38, 42, & 45	Rs. 6/ -/-
2. Vakalat Ex.2.	" -/10/-	2. Copying and stamps Exs.54, 55 & 56	" 17/11/-
3. Applications Exs.24, 32, 35, 44 and 57.	" 3/ 2/-	3. Pleader's fees on Rs. 2500/-	"125/ -/-
4. Process fees Exs.24.	" 2/ -/-	4. Takid Ex.47.	4/ -/-
5. Copying fee and stamp Exs 5 to 20.	" 2/ -/-		142/15/-
6. Pleader's fees on Rs. 2500/-	" 125/ -/-	costs disallowed applns Exs 26 to 30, 34, 37, 38 & 45	5/10/-
	" 152/ -/-		137/ 5/-
Costs disallowed applns Exs 24, 32, 44.	" 1/14/-		
Balance	150/2/-		

Given this 17th day of November 1947, under my hand and the seal of the court.

Sd/- Dhumwad
Clerk.

Sd/- B.A.Chaugule
C.J. S.D. Dhw 5/12/47

Plff's pleader Sd/- Inamdar
Deft's pleader -

True copy
Sd/- x x x

Copied and compared by.

Sd/- x x x

Copy was applied for in person on 25th November 1947. 19

Sd/- x x x x
Clerk of the Court.

It was ready for delivery on the 5th December 1947.

Sd/- x x x x
Clerk of the Court.

It was delivered on the 11th December 1947.

Sd/- x x x x
Clerk of the Court.

4980
9/6/-
2/6/-
2/6/-
-/9/-
-/3/-

Received on 4/12/1945.

Registered on 4/12/1945.

14/14/-

Decided on 17/11/1947.

Duration one year 11 months and 13 days.

In the Court of the Civil Judge, Senior Division, Dharwar,

At Dharwar.

L.C.civil suit No. 396 of 1945. Ex.67.

Pleaders
Mr.L.R.Durg

Raghavendra alias Shrinivas Gururao Jahagirdar of Hebli age 22, Caste Brhmin. Occupation watanivahivat, of Hebli, Taluka Dharwar ..... plaintiff.

against.

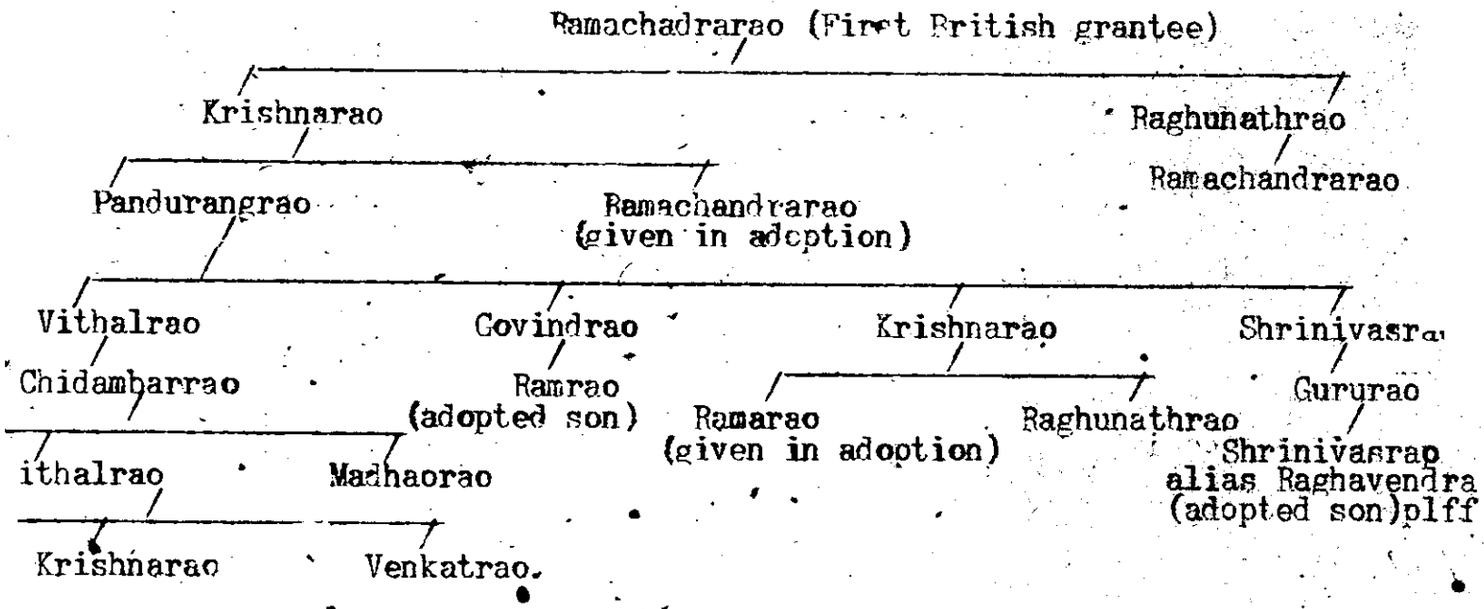
Assistant Govt. Pleader Mr.Malapur.

The Province of Bombay..... defendant.

Claim Rs.205/-

The plff sues to declare that the defendant cannot resume the ~~Inamx~~ lands in suit by the levy of full assessment, to get a perpatual injunction against the defendant restra ning him from claiming the said assessment and to get costs.

2. He states that the Inama Commissioner's decision relating to the Inam estate of which the suit properties are a part was passed on 25/1/1858, that the decision was passed in accordance with rule 1 shedule B of Bombay Act.No.11 of 1852 and according to that decision, the villages Talwai and Kurdapur are to be continued in perpatuity to Raghunathrao and Krishnarao and their lineal male descendants, that the geneology relevant for the purposes of this suit is as given below:-



The plff says that thenadoptive father of the plff was Gururao and he is direct descendant of Krishnarao and Laxmibai the widow of Gururao duly adopted plff on 19/7/1942 and he has thus become a lineal descendant of Krishnarao, that the plff submits that according to the terms of the sanad the lands in suit had to be continued to him free of assessment and inspite thereof, the Government of Bombay decided in its revenue department Resolution No.861 of 1939 dated 15/12/1944 that the lands in suit have been resumed by levy of full assessment and he submits that the decision is bases on an incorrect application of law, that it was decided that the plaintiff is not a lineal descendant of Krishnarao because he is an adopted son, that there are admittedly in existance some other lineal male descendants also and therefore, no resumtion can be legally made under the terms of the decision of Inam Commissioner and therefore, the suit is filed, that the notice as required by section 80 of the C.P.C. is given.

3. The defendant states at Ex.31 that the claim of the plff is denied in toto, that regarding the alienations in xxxpara 3 of the plaint, it is denied that the plff is the lineal male descendant of Krishnarao and it is submitted that the plff is a stranger to the Inamdar family and his adoption by Laxmibai is invalid and unauthorised without the prior sanction of Govt., that the plff is not entitled to hold the suit lands free of assessment and the orders passed by the Govt in G.R.R.D. No.861/1939 dtd 15/12/1944 are perfectly legal and it is submitted that the fact that there are in existance other lineal male descendants

of the original grantee does not entitle the plaintiff to hold the suit lands as aforesaid, the plff's contention to the contrary are incorrect and hence denied and the plff is not entitled to any relief and therefore, the suit fails and must be dismissed with costs.

4. The plff gave an application (Ex.35) calling upon the defendant to answer the interrogatories stated therein. The first question stated there is " Whether the defendant admits that Hamrao Govindrao as shown in the genealogy in shedule (i) with the plaint was the adopted son of Govindrao" and this question is answered by the defendant at Ex.39. He says "No. In the Written statement in suit No.2 of 1907 of the District Court of Dharwar filed by the said Hamrao against the Secretary of State for India in Council, his right to sue as the adopted son of Govindrao was denied on the ground of want of sanction by Government to his adoption. The said suit was dismissed by the District Munsif Court and the decree was confirmed by the High Court. The second question is whether the defendant admits that the lands of Govindrao were continued to his adopted son Hamrao as the adopted son of Govindrao and after the said Hamrao's death, they have now been continued to his sons Krishnarao and other". The answer by the defendant is " the reply is in the negative to the first part of the question and defendant denies having itself in any way continued Govindrao's land to Hamrao as the former's adopted son. But Hamrao was the natural son of Krishnarao Pandurangrao sholder of 4 annas Hebli Saranjam and the great grand son of Krishnarao.Hamrao the original grantee. Hamrao being a lineal male descendant of Krishnarao, there was no occasion for Government to interfere with the said Hamrao's possession of the land in Yalwal and Kurtapur and it did not matter to Government whether Hamrao held the possession of the lands of Govindrao if he was the lineal male descendant in the Inamdar family. To the second part of the interogatory, the defendant submits that Hamrao being the lineal male descendant of the original grantee, Krishnarao Hamrao and his natural sons are holding their father's lands by right of inheritance". The third question was "Whether the defendant admits that no sanctio

sanction of Government was asked for or taken to the said a adoption" the answer is "Sanction to the adoption of Ramrao was neither asked for nor given by Government which therefore refused to recognise him as the adopted son of Govindrao".

5. At Ex.40, the pleader for the defendant stated that the factum of adoption of plaintiff was not disputed so far as this suit was concerned. The defendant gave an application Ex.42 stating that the plaint valued the claim for the purpose of jurisdiction at Rs.200/- only and he submits that for the purposes of pleader's fees, it has to be fixed with reference to the subject matter of the suit and in the present case, the subject matter was the lands in suit measuring 2 3 acres and 14 gunthas and the value of these lands is more than Rs.15,000. The pleader for the plaintiff has stated at Ex.43 that the suit is for a declaration that the defendant cannot resume the lands in suit and a permanent injunction restraining the defendant from claiming the said assessment and the hence the valuation for the purposes of Court fee is the same as the value for the purposes of jurisdiction and for pleader's fees and therefore, the valuation made by the plff is correct. On those pleadings, the following issues are raised at Ex.41:-

1. Does defendant proves that the adoption of plaintiff by Laxmibai is invalid and unauthorised without the prior sanction of Government ?

2. Was the sanction of Government necessary to be obtained before plff was taken in adoption by Laxmibai.

3. Is plff entitled to hold suit lands free of assessment?

4. Is plff entitled to the declration sought ?

5. Is plff entitled to the injunction as prayed ?

6. What order ?

7. What is the valuation for claim for the purposes of fix pleader's fees.

Answer:- 1. Yes. 2. Yes. 3. No. 4. So. 5. No. 6. as given below. 7. as given below.

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Reasons

6. Issues Nos. 1 and 2: The plff has adduced no oral evidence in the case Ex.54, Vattatraya (Ex.58) and Viranagouda (Ex.59) are examined for the defendant. The case of the plff is that he was taken in adoption by one Laxmi Laxmibai widow of Gururao on 19/ /1942. It is stated for defendant that the facts of adoption is not disputed for the purposes of this suit (Ex. 40) but it is stated that the adoption is not legal and valid as no permission of Government was taken for the adoption before the plaintiff was adopted. The plff has stated that the lands stated in the plaint are situated at Talwai and Kurdapur belong to him and that the defendant resumed the lands and levied full assessment regarding the same as no permission of Government was obtained before the adoption and that there was Government Resolution No.861/1939 dated 15/12/1944. Ex.54 is a copy of Government resolution No.861/1939 dated the 9th of August 1940. It is stated there " Government accepts the opinion of the Remembrancer of Legal Affairs that the grantee of Inam in the present case had no right of alienation and that the alienation of Inam lands made by the grantees family to outsiders are invalid The commissioner's recommendation for the resumption by levy of full assessment of lands out of the Inam villages of Talwai and Kurdapur in the Dharwar Taluka measuring 546 acres 9 gunthas and 84 acres , 15 gunthas respectively which have been alienated to outsiders and which are now in the possession of the aliences is accordingly sanctioned". The Remembrancer of Legal Affairs stated that the question was whether the Inam grant was alienable. He says that the decision of the Inam Commissioner was that the villages were to be continued in perpetuity to their holders and their lineal male descendants and that no summary settlement was applied to the holders. According to him, the Inam was not transferable. He says that according to the decision of the Inam Commissioner, the Inam to be continued in perpetuity and that it was in favour of the then holders and their lineal male descendants. According to him, the words continued to lineal male descendants are not words indicative of general inheritance but are words of limitation (I.L.R.51 Cal. 561)

and do not suggest that th grant was absolute. The grantee, therefore had no right of alienation and the alienation made are invalid . Therefore, he stated that the grants should be resumed and full assessment should be levied. Ex.55 is a copy of resolution No.361 of 1933 dated 15th december 1944 and this resolution is challenged by the plff as not binding on him and he says that the Government have got no right to levy full assessment on the property described in the plaint and belonging to him. Government stated there " Government agrees with the commissioner that the adopted son of Mrs.Laxmibai Kom Garo rao has no right to enjoy as Inam the starred Inam lands of Tal vai and Kurdapur in Dharwar Taluka". The commissioner recommended for the resumption by levy of full assessment of these starred Inam lands and this was sanctioned. As regards the lands of Talvai and Kurdapur, the Commissioner stated "These lands are starred Inam lands and according to the decision of the Inam commissioner are to be continued in perpetuity to Ramachandrarao and Krishnarao and their lineal male descendants". He says that the words contained in lineal male descendants are not words indicative of general inheritance but are words of limitation and do not suggest that the grant was absolute and therefore the enjoyment of the estate was limited by to the grantees and their male heirs and that the words of the grant do not include an ad opted son and therefore, an adopted son can have no right to enjoy the lands as Inam and that the lands will have to be resumed by levy of full assessment and accordingly, he stated that the starred Inam lands of Talvai and Kurdapur may therefore, be resumed by levy of full assessment". In Jogleker's Alienation Manual first edition, it is stated at page 178 " In village form No.3 some Inam lands the tenures of which are of a complicated nature are marked with stars once for all with the sanction of the Collector. In their case, the suggestion is discussed by the Collector in the first instance and subsequently checked by the alienation offices. The unstarred Inams of this class are treated like Khalsat lands and succession thereto is determined by the village officers and subsequently checked by the Mamlatdars alone" In the present case , the lands are starred Inam lands. The ruling regarding the same is at Ex.67. It is called the sanad

of Chaplain. The words used there are that the lands were given as Jahagire and they were to be enjoyed by them as पुत्र पौत्र परंपरा Thereafter, there was Inam commission and its decision it at Ex. 53. It stated therein "the villages of Taival and Kurdapur situated in the Thirmar Taluka of Dharwar collectorate to be continued excepting the rights &c. of Kadgars and inamdars as be long as they may remain in existence any lineal male descendants of the grantee Raghunathrao bin Ramchandrao Jahagirdar, the right of Krishnarao bin Raghunathrao and his descendants being ingored" This was the decision of Mr.Etheridge. There was an appeal on the decision and the decision in appeal is at Ex.52. It is stated there that the Inam Commissioner saw no grounds for not continuing the villages according to the terms of Mr.Chaplain's sanad and he accordingly, decreed that the Taival and Kurdapur villages be continued in perpetuity to Raghunathrao and Krisnnarao and lineal male descendants holding Ramachandrao whose adoption was sanctioned by Government to be the son of Raghunathrao. This is the decision of Major Gordon in appeal on the decision of Mr. Etheridge.

7. It is stated for plff that the words lineal male descendants include an adopted son and that the rights of the adoptedson are the same as the son born of the last male holder and that the Bom Government was wrong in holding that the rights of the adopted son were different from the natural born son and that permission of Government was not necessary before the before the plff was adopted by Laxmibai and therefore, full assessment could not be levied on the suit lands. Reliance was placed by defendant on the case Gadadev vs. The Secretary of State for India in Council 11 Bom L.R.528. It was held there at page 521 " The decision of the Inam Commissioner that the Inam should be continued as long as any lineal male descendants of Ramchandrarao should remain in existence means that the benefit of the Inam shall be continued to those lineal descendants only and does not deprive the Government of the rights conferred upon them by statute of assessing the lands should it see fit to any third person". In the present case defendant No.1 is not a lineal descendant of Ramchandrrao but he has been brought into the family by an unrecognised adoption and as such, the third person holding the same position

as a purchaser donee holding the entity of the estate which has passes to him and therefore he has become liable to payment of the annuallaud revenue at the full assessment". It is stated for plff that the decision cannot be applied to the facts of the present case as the grant there was different from the grant in the present case and that/facts are different and that the grant was given after the Act of 1886 was passed and that in the present case, the grant was given long before the Act. It is not disputed that the decision of the Inam commissioner is to be looked upon as a decree of the civil court and it is binding both on the Govt as well as the persons to whom the lands were given. Therefore, that decision of Mr.Gordon D.57 is binding on the parties to the present suit. Mr.Rajana Patil a Civil Servant has written a book styled as hand book for revenue officers. In that book it is stated at page 545 "The following rules regarding adoptions apply to those who hold inams or property of any kind emanating from the state and who have not come under the summary settlement, no adopted son will be recognised as having by virtue of his adoption a right to the possession of the property of any kind held from the state unless the sanction of the Government has been obtained previous to his adoption and the regular Nazerana paid for it when such is payable". According to plff, in the present case, there is no question of alienation of lands and the question is as to whether the Government have got right to levy full assessment on the suit lands. The plff has challenged the Government resolution (Ex.56). According to him, (Ex.56), there was no question of sanctioning any adoption. According to plaintiff the Government accepts the plaintiff's adoption but only say that no sanction was obtained before adoption and, therefore, the adopted son was the Khasil sale dependent. The plff relies on the Chaplain's award (Ex.5) and the words stated therein are wide enough according to him to include an adopted son. It is further stated that in Late Major Gordon's decision, reliance was placed on Mr.Chaplain's award and therefore, the words in Chaplain's award should be taken into examination consideration, before the point is decided. It is seen that the Chaplain's award was superseded by the decision of the Inam

Commissioner (Ex.52) and Ex.52 is binding on all the parties to the suit. It is stated for plaintiff that there are no words in Ex.57 to show that the natural born sons of the holder were entitled to get the property. In Vasudev vs the Collector of Poona 10 Bom. High Court reports 471, it was held that the Inam Commissioner's decision under Act.11 of 1852 on matters falling within his jurisdiction are final except when and as modified by an appeal to Government in its judicial capacity under the act and and binding not only upon Inamdar but upon the Government itself in its executive capacity. Therefore, I find that the decision of the Inam commissioner (Ex.52) is binding on the parties and it is not for us to go behind the decision in Ex.52 and therefore, the sanad Ex.52 cannot be of any use in interpretting the words stated in Ex.52. The plff relies on Pratapsingh vs. Agarsing 43 Bom.778 and says that the rights of an adopted son unless curtailed by express texts are in every respect the same as those of a natural born son. But in the present case, we are concerned with Inam lands which are to be inheritted in terms of the decision Ex.52. Therefore, the general law that the rights of an adopted son are the same as those of a natural born son do not apply to the facts of the present case. The plaintiff relies on sec.4 of Act.2 of 1863 and says that Inam lands can be continued as heritable and transferable property not only to the actual descendants of the person but also of all his legal successors by inheritance including heirs by collateral succession and heirs by adoption and their assigns. But it is seen that the Government have made rules stating that the permission of the Government was necessary before a boy is taken in adoption and if no permission is obtained before hand, the adoption can not be recognised by Government. Therefore, Government justified in saying that as no permission was obtained by plff before his adoption and as plff is a stranger to the family, the Govt had a rihgt to resume the property and to levy full assessment on the lands as decided in Ex.55, the Government resolution challenged by plaintiff. I, therefore, find issues No.s1 and 2 in the affirmative.

8. Issues Nos 3 to 5. In view of the decision on the above issues, I find these issues in the negative.

9. Issue No.7. The pleader for the defendant has given an application Ex.42 and the plff's pleader has replied to that at Ex.43 and on that the issue is framed. At the hearing the defendant has examined two witnesses to show as to the value of the suit property. The pleader for the defendant has given a purshis (Ex.56) stating that some lands are leased by the plaintiff for Rs.1700/- and that the others are kept for home cultivation. According to him, the value of the suit property is more than Rs.15000/-. The pleader for the plaintiff has stated at Ex.66 that in this suit the rental or the value of the suit lands is irrelevant for the purposes of the pleader's fees as the subject matter of the suit is the claim to exemption of assessment of the suit lands and that the assessment of the suit lands is not yet fixed. The plff has filed the suit for a declaration and injunction and according to him, the valuation stated in the plaint for jurisdiction is the valuation for the purposes of pleader's also. The pleader for the defendant relies on the ruling Rama vs Balappa A.I.R. 1942 Bom.203. It is stated there that the pleader's fees should be computed on the value of the subject matter in dispute where that value can be ascertained by the taxing officer from materials on record subject to the qualification that the value of the subject matter of the suit should never be regarded as granted than the amount necessary for ascertaining the pecuniary jurisdiction of the Court. In the present case, the plff says that the defendant has got no right to levy assessment on the suit property. The defendant says that he has got a right to do so. In this suit, there is no dispute regarding the ownership of the suit property. The lands involved are about 300 acres; the lands are not assessed as yet. It appears that the assessment can not be less than Rs.500/- having regard to the lands in the villages in the suit. However, I think it would be reasonable to hold from the evidence on record that the claim should be valued at Rs.2500/- for pleader's fees.

29 97

O R D E R

The suit is dismissed. The plaintiff shall pay the costs of the defendant, and shall bear his own. The value of the subject matter for pleaderâs fees is Rs.2500/-.

17/11/1947.

Sd/- B.A.Chaugula.
Civil Judge, Sn. Division

Copied by
Sd/- x x x

Compared by
Sd/- x x x

True copy

Sd/- x x x
Clerk of the Court.

31.99

Suits:
Dharwar.
For a declaration that Government has no right to resume by levy of full assessment the starred Inam lands at the villages of Talvai and Kurdapur.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2434
Bombay Castle, 11th March 1948.

Read Government Resolution, Legal Department, No. 5435 dated the 2nd August 1946.

Letter from the District Government Pleader, Dharwar, No. 233, dated the 25th February 1948, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Dharwar,

In the Court of the Civil Judge (Senior Division) Dharwar.	
Civil Suit No. 396 of 1945.	
Raghavendra alias Shrinivas Gururao Jahagirdar of Hubli. .. .. .. Plaintiff; versus The Province of Bombay .. Defendant.	
Claim Rs. 205.	

on the 17th November 1947, when the following order was passed :-

" The suit is dismissed. The Plaintiff shall pay the costs of the defendant, and shall bear his own. The value of the subject matter for pleader's fees is Rs. 2500/-."

and forwarding uncertified copies of the judgment and decree.

RESOLUTION. - The result of the suit is recorded.

By order of the Governor of Bombay,

Original R. M. Mehta

R. M. Mehta,
Assistant Secretary to Government,

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar.

Subd for sign. Orders at p.2. 11/3 A Sp/11th.

BM. 10.3. Issued 14/3

10D

20

Submitted after issue

Title in SWDivr 6/46.

12/3

AS [illegible]/21

S. Divr. 6/46

18/3.

A 33 105

Suits :
Dharwar.
For a declaration that Government has no right to resume b levy of full assessment the starred Inam lands at the villages of Talvai and Kurdapur.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3205
Bombay Castle, 20 April 1948.

Read Government Resolution Legal Department No. 2434 dated 11th March 1948.

Letter from the Collector of Dharwar No. NAW 462 dated

In the Court of the Civil Judge (Senior Division), Dharwar	3rd March 1948
Civil Suit No. 396 of 1945.	requesting sanction
Raghavendra alias Shrinivas Gururao Jahagirdar of Hubli .. .. Plaintiff; versus	to the defence of
The Province of Bombay .. Defendant;	Civil Appeal No. 339
Claim - Rs. 205.	of 1947 filed by the

plaintiff in the suit noted in the margin and forwarding copy of the letter from the District Government Pleader with uncertified copies of the judgment and decree.

Endorsement from the Commissioner Southern Division, No. LST-359 dated 15th March 1948 forwarding the above with his concurrence.

RESOLUTION. Sanction is accorded to the defence of Civil Appeal No. 339 of 1947 in the Court of the District Judge Dharwar on the lines of the brief accompanying Government Resolution Legal Department No. 5435 dated 2-8-46 and the favourable grounds contained in the judgment of the Civil Judge, Southern Division Dharwar dated 17-11-47.

By order of the Governor of Bombay,

Original

R.M. Mehta.
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner Southern Division,
The Collector of Dharwar,
The District Government Pleader Dharwar (with case papers.)

CC/1/4.

Bombay Castes :
Marwar.
For a declaration that
Government has no right to resume o
Jay of Jill assessment the Sarvad
Jan lands as the village as of
Talvad and Kundanur.

SOCIAL ... OF ... AIR.
Legal Department,
Resolution No. 3...

Bombay Castes, dated April 1948.

Read Government Resolution Legal Department No. LA34
dated 11th March 1946.

Letter from the Collector of Mary... dated

In the Court of the Civil Judge : rd March 1948
(Senior Division), Marwar :
Civil Suit No. 389 of 1944. : requesting examination
Jayavanta alias Shrinivas Surpao :
Jamadar of Jhali .. .. Plaintiff; : to the defence of
: versus
The Province of Bombay .. Defendant; : Civil Appeal No. 389
Claim - Rs. 400. :
---of 1947 filed by the

plaintiff to the suit noted in the margin and forwarding copy
of the letter from the District Government Pleader with
uncertified copies of the judgment and decree.

Government from the Commissioner Southern Division, No.
LAW-389 dated 15th ... arch 1948 forwarding the above with Ex bi
dence ...

Civil ... Sanction is accorded to the defence of Civil
Appeal No. 389 of 1947 in the Court of the District Judge,
Marwar on the lines of the brief ... dated 2-3-48 and the
resolution ... egal Department No. 3449 dated 2-3-48 and the
favourable remarks contained in the ... ment of the Civil
Judge, Southern Division Letter dated 17-12-47.

By order of the Governor of Bombay,

...
Assistant Secretary to Government.

To
The Advocate General Marwar (with case papers.
The Collector of Marwar.
The Commissioner Southern Division.
The Revenue Department.

35 HB

Suit.
Dharwar.
For a Declaration that
Government has no right to
resume by levy of full assessme
the starred Inam lands at the
villages of Talvai and Kurdapur

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5649

Bombay Castle, 20th May 1949.

Read Government Resolution, Legal Department, No.3205, dated 2nd April 1948.

Letter from the District Government Pleader, Dharwar No. 310, dated 2-4-1949 stating that Civil Appeal No. 339 of 1947 filed by the plaintif in the suit not in the margin was decided by the District Judge, Dharwar on 28-2-1949 and the following order was passed :-

In the Court of the Civil Judge (Senior Division), Dharwar Civil Suit No. 396 of 1945. Raghavendra alias Shrinivas Gururao Jahagirdar of Hubli .. ... Plaintiff; Versus The Province of Bombay .. .. Defendant; Claim - Rs. 205-1

The appeal is allowed. The plaintiff is granted a declaration that the defendant Government cannot resume the lands in suit by levy of full assessment. There should be a perpetual injunction against the defendant restrainir them from claiming the said assessment from the plaintiff. The plaintiff should get the costs of the suit and of the appeal from the defendant who should bear their own throughout and requesting sanction to the institution of a appeal in the High Court, Bombay against the above decisio

Letter from the Collector of Dharwar No.LAW 462, date 9-4-1949 stating that he agrees with the District Governme Pleader that an appeal should be instituted in the High Court , endorsement from the Commissioner, S.D. No.LST 359 dated 9-5-1949 forwarding the abovewith his concurrence.

Resolution.- Sanction is accorded to the institution of a second appeal in the High Court, Bombay against the decision of the District Judge Dharwar, dated 28-2-1949 on the lines of the brief accompanying Government Resolution, Legal Department No. 5435, dated 2-8-1946 and the favourab grounds contained in the judgment of the Civil Judge, S. D Dharwar, dated 17-11-1947.

By order of the Governor of Bombay,

Original R. M. Mehta 20/5/49

R. M. MEHTA,
Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner, S.D.,
The Collector of Dharwar,
The Government Pleader,
High Court, Bombay-
with an uncertified copy of a judgment and the District Government Pleaders letter referred to above.

The District Government Plead Dharwar (with a request to forward direct to the Governm Pleader, High Court a certifi copy of each of the judgment the Civil Judge, S.D., Dharwar dated 17-11-1947 and the District Judge, Dharwar, dated 28-2-1949.

Dharwar civil Appeal No. 339 of 1947 Please see P.P. 1949

Subd for urgt Orders at p. 4 post. 19/5/49 Resubd the correction has been made. The mistake is regretted. Obs.

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Second Appeal No. of 1949.

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, BOMBAY.

AT BOMBAY.

Appellant :- The Province of Bombay.

Versus.

Respondent :- Raghavendra alias Shrinivas Gurura
Jahagirdar of Hebli.

I, A.S. Gunjikar, clerk to District Government Pleader, Dharwar make oath and state as follows:-

A copy of the Government Resolution (Legal Department) No. 5649 dated 20-5-1949 sanctioning the institution of Second Appeal in the High Court sent by the Assistant Secretary, to the District Government Pleader, Dharwar, was duly received on 23-5-1949. Below it was an endorsement as under :

> "The Dist. Government Pleader, Dharwar (with a request to forward direct to the Government Pleader, High Court a certified copy each of the judgments of the Civil Judge, S.D., Dharwar dated 17-11-47 and the District Judge, Dharwar dated 28-2-1949."

Accordingly copies of the two judgments were applied for and sent to the Government Pleader, High Court, Bombay on 8-6-1949. As copies of decrees were not mentioned in the above endorsement they were not applied for.

A copy of the letter No. 2840 dated 20-6-49 from the Government Pleader, High Court, Bombay addressed to the Collector of Dharwar was sent to the District Government Pleader but it was received in his office on 28-6-1949. As suggested in this letter copies of decrees in L.C. Suit No. 396/45 and in Civil Appeal No 339/47 were immediately applied for. The copies obtained are sent to the Government Pleader, High Court, Bombay.

29-6-1949. Sd. A. S. Gunjikar.

Clerk to the Dist. Govt.Pleader,Dharwar.

I, A. S. Gunjikar, Clerk to the District Government Pleader, Dharwar, solemnly affirm that what is stated in the above paragraphs is true to my knowledge and belief and I believe the same to be true.

29-6-1949. Sd. A. S. Gunjikar.

Clerk to the Dist. Govt.
Pleader, Dharwar.

(Usual affirmation clause follows).

In the Court of the District Judge, Dharwar.

At Dharwar.

Civil Appeal No.339 of 1947.

From decree in L.C.Suit No.396 of 1945 of the Court of the Civil Judge, Senior Division, Dharwa (Mr.B.A.Chaugule).

Pleaders :-

Mr. N.K.Dixit.

Raghavebdra alias Shrinivas Gururao Jahagirdar of Hebli Taluka Dharwar. .. .. .. Appellant (Original plaintiff)

Versus.

The Assistany Govt Pleader.

The Province of Bombay. .. .. Respondent (Original defendant)

Claim Rs.205/- for both.

.....

Judgement.

This is an appeal by the plaintiff against a decree dismissing his suit, L.C.Suit No.396 of 1945, passed on 17-11-1947 by the Civil Judge, Senior Division, Dharwar.

4-12-49

The suit was filed on 4-12-45 against the Provincial Government. The plaintiff alleged th t one Laxmi bai widow of Gururao Heblikar had adopted him to her deceased husband according to religious rites on 19-7-1942. The family of the plaintiff's adoptive father Gururao was in possession of an Inam which consisted of lands in two villages of Talvai and Kurdapur in Dharwar Taluka. The branch of the family to which his adoptive father belonged was in possession of Inam lands in these two villages aggregating 300 acres and 14 gunthas and the plaintiff was in possession of these lands after his adoption. The Inam of the two villages was to be continued to the original grantee Raghunathrao and Krishnarao and their lineal male -

descendants. In a schedule appended to the plaint, xgx a genealogy was given showing the position of the plaintiff's adoptive father Gururao and the plaintiff in the family. It was alleged that the plaintiff after he was adopted as the son of Gururao, had become a lineal male descendant of Krishnarao one of the original grantees of the Inam. The Provincial Government, however, by a resolution G.R.R.D.No.861/39 dated 15-12-1944 ordered the resumption of the lands in possession of the plaintiff, by levy of full assessment. It was contended that the decision of the Provincial Government was passed on an incorrect application of the law. It was also stated that there were in Hebli some other male descendants in the family and that no resumption could legally be made under the terms of the decision of the Inam Commission. The reliefs claimed by the plaintiff were :- (1) a declaration that the defendant cannot resume the lands in suit by levying full assessment; (2) a perpatual injunction restraining the defendant from claiming the assessment; and (3) costs of the suit and other incidental reliefs. He valued the suit for the purpose of Court fees at Rs.205 which was made up of Rs.200/- for the declaration and Rs.5 for the injunction.

The suit was resisted by the Provincial Government. By their written statement (Ex.31), they disputed the claim of the plaintiff to be a lineal male descendant of Krishnarao one of the original grantees. It was contended that Laxmibau had adopted the plaintiff without a prior sanction of the Government and therefore the adoption was invalid and unauthorised and the plaintiff was a stranger to the Inamdar's family. They denied the right of the plaintiff to hold the suit lands free of assessment after the Government passed the order on 15-2-1944 which order was asserted to be legal. The fact that there were other lineal male descendants of the grantee would not entitle the plaintiff to hold the suit lands free of assessment.

On these pleadings, issues were framed and findings were given on them by the learned Civil Judge as below :-

1. Does the defendant prove that the ~~xxxxxxxx~~ - adoption of the plaintiff by Laxmibai is invalid and unauthorised without the prior sanction of the Government ?
2. Was the sanction of Government necessary to be - obtained before the plaintiff was taken in adoption by Laxmibai ?
3. Is the plaintiff entitled to hold the suit lands free of assessment ?
4. Is the plaintiff entitled to the declaration - sought ?
5. Is the plaintiff entitled to the injunction as prayed ?
6. What order ?
7. What is the valuation of the claim for the purpose of pleaders fees. ?

Findings :-

1. Yes. 2. Yes. 3. No. 4. No. 5. No.
6. As given below. 7. As given in the order.

The same ~~xxixx~~ issues arise for decision in the appeal and my findings are :-

1. No. 2. No. 3. Yes. 4. Yes. 5. Yes.
6. As per order. 7. As valued by the plaintiff.

Reasons.

There is no dispute that the plaintiff was adopted on 19-7-1942 by Laxmibai the widow of Gururao Shrinivasrao Jahagirdar who was a junior member of the Hebli Saramjamdar family. The defendant, by a purshis (Ex.40) stated that the factum of the plaintiff's adoption was not disputed for the purpose of this suit. In the written statement, the validity of the adoption of the plaintiff as such was not challanged, though it was urged that, as a prior sanction of the Government had not been obtained before the adoption

the adoption would not give to the plaintiff the right to hold the Inam lands free of assessment under the terms of the grant. The genealogy given in the plaint showing the position, in the family, of Gururao, whose widow - Laxmibai adopted the plaintiff, can also be varified from a genealogical table of the family set out in the judgement of Shah J. at page 125 in Gururao v. Secretary of State for India (19 Bom.L.R.117). This Gururao was the adoptive father of the plaintiff. The family is also the holder of a Saranjam of the village Hebli which was granted to it by the Peshwas and was continued by the British Government. When the territory comprising the Southern Maratha Country was being subjugated by the British troops under the generalship of Sir Thomas Munro the then Jahagirdar of Hebli gave help in the prosecution of the war to the General and in a report made by the General to Mr. Elphinstone on 28-8-1818 there is a passage as follows :-

> " The petty Jahagirdar of Hebli, whose ancestors possessed both Nargund and Ramdurg, joined us on breaking out of the war, and will for his services receive in addition to his Jahagir of lands yielding a rent of 2 or 3 thousand rupees ".

This recommendation was accepted by Mr. Elphinstone andwas subsequently confirmed by Government on 7-11-1818. A - Sanadwas thereafter issued by Mr.Chaplin who is described as Collector and Political Agent of Dharwar. It is dated 2-3-1819. A certified copy of the sanad which is in Marathi is Ex.57. The sanad is addressed to Krishnarao Raghunath of Samsthan Nargund. In the preamble, it is stated that, when the army of the Government was out to subjugate the territory beyond the Tungabhadra river, he had given assistane to Government and the Company Govt. was pleased to give to him a Jahagur of Rs.2000 in the two villages of Talvai and Kurdapur details of which are given in the sanad. In the concluding portion, it is stated that the grantee should enjoy the Jahagir from father to son, son to grand-son and so on (पुत्र पौत्र परंपरी अन भोगुन When the Inam Commission was set uo to consider - claims made by persons who he d lands free from the -

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24-7-135

liability to paynthe assessment to Government, the Inam of the two villages of Talvai and Kurdapur was investigated by the Assistant Inam Commissioner S.D. Mr. A.T.Etherridge. Ex 53 is a copy of his decision. At the time of the enquiry, the Jahagir which was alleged to be a grant of a hereditory (surva) Inam of the two villages was entered in the records as the Jahagir villages of Rangarao and Ramrao Heblikar - Jahagirdar. Thed decision of Mr.Etheridge sets out various documents which the claimants had roduced in support of the claim and the main documentx was the sanad issued by Mr. - Chaplin (Ex.57). In para 3 of his order, Mr. Etheridge - expressed his doubt whether Mr. Chaplin was, at the date of the grant, a competant authority to alienate the Government revenues in perpetuity. ccording to him, the competant - authority was Sir Thomas Munro and in his report, an extract of which is quoted above, he referred to only one Jahagirdar who had given to him help and for whose services the grant o a Jahagir was proposed. Mr. Etheridge held that Sir Thomas Munro had intended to give remuneration to only Raghunathrao for his services and, as there was no evidence that Krishnarao had at any time assisted Sir Thomas Munro, it could not have been contemplated by the General to regard Krishnarao for what he had never performed and therefore Mr. Chaplin had no authority to make a joint grant of the Jahagir in the names of Raghunathrao and Krishnarao. Ultimately, as would be seen from para 7 which is the last para of the order, Mr. Etheridge held that the two villages should be continued - except the rights etc of Hakdars and Inamdars so long as - there may remain in existence any lineal male descendants of the grantee Raghunathrao Ramachandrarao and the right of - Krishnarao Ramachandrarao and his descendants should be - ignored. Against Mr. Etheridge's decision, an appeal was filed to the Inam Commissioner. Ex.52 is the decision of Major M.F.Gordon who was the Inam Commissioner S.D. It is dated 25-1-1853. Major Gordon deferred from Mr. Etheridge in his view that only one brother i.e. Paghunathrao was to

Ex 53

Ex 57

Ex. 52

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the object of the grant of the Inam. Major Gordon observed as follows :-

> " That reasons may have induced Mr.Elphinstone to sanction the grant to two individuals, instead of as suggested by Sir Thomas Munro to one individual, it is perhaps unnecessary to enquire but as the grant was intended as a reward for important services it seems not improbable that the fact mentioned by the Assistant Inam Commissioner, that Raghunathrao had no heir, and that the grant would otherwise lapse at his death, induced Mr.Elphinstone to include Krishnarao also in the "estimate". That he was competent to do so is unquestionable, and in Sir Thomas Munro's recommendation in the case, there was nothing to prevent Mr.Elphinstone, on whom had devolved the responsibility of administering the Political affairs of the Southern Maratha Country from Modifying, in any way he pleased that recommendation and as both Raghunathrao and Krishnarao are included in the Commissioner Mr.Elphinstone's estimate for a Jagher, and Mr.Chaplin's sanad was based upon that estimate, and not upon the earlier proposal of ~~Xx~~ Sir Thomas Munro, the Inam Commissioner can see no grounds for not continuing the villages according to the terms of Mr.Chaplin's sanad and he accordingly decrees that in supercession of the Assistant Inam Commissioner's decision, and in accordance with Rule 1 schedule B of Act XI of 1852 - Talwai and Kurdapur be continued in perpetuity to - Raghunathrao and Krishnarao and their lineal male - descendants, holding Ramachandrarao whose adoption was sanctioned by Government, to be the ~~xxx~~ son of - Raghunathrao."

Act XI of 1852, as its preamble shows was intended to create a machinery for investigating claims made against Government on account of Inams and other estates wholly or partially exempt from payment of ~~x~~ land revenue in the territories of the Dekkhan Khandesh and Southern Maratha Country and other districts which had been annexed to the Bombay Presidency. By section 2 the Inam Commissioner was appointed to make investigations and to give decisions. The duties of the Inam Commissioner were defined in schedule A to the Act. Rule 1 of schedule A is as follows:-

> " The duty of the Inam Commissioner and his assistants shall be to investigate, in the manner prescribed by this enactment, the titles of the persons holding or claiming against Government the possession or enjoyment of inams or jagirs, or any interest therin, or claiming ~~x~~ exemption from the payment of land-revenue and gmerally to act according to the instructions of Government in all matters not specifically provided for in this enactment."

Shedule B contained rules for the adjudication of such titles.

Rule 1 is as follows:-

> "All lands held under a specific and absolute declaration by the British Government, or any competent officer acting under it, that they were to be continued heredditarily or in perpetuity exempt wholly or partailly ~~fxxx~~ from the payment of revenue are to be so continued according to the purport of such declarations

Provision 1st:- If any question shall arise as to the

competency f the officer to make or give such declaration as af oresaid, the Commissioner is to suspend his judgement and report thecircumstances of the case to the Governer of Bombay in Council to whom a power is hereby reserved of determinging f inally whether such officer is competent to make or give such declaration and the Commissioner or Assistant Commissioner upon receiv ing the determination of the said Governor in Council, shall decide accordingly."

Mr. Etheridge, as can be seen form his decision (Ex53) thought that there was a doubt regarding the competency of Mr. Chaplin to make the grant of the Jahagir to th e two brothers Raghunathrao and Krishanarao and at one stage he made a reference to the Inam Commissioner but as he was told he should give a decision and the parties aggrieved might then make an appeal, Mr. Etheridge passed the order which was then appealed against to Major Gordon the Inam Commissioner. He held that Mr. Chaplin was a competent authority to make the declaration of the grant of Jahagir. The finding of Major Gordon that Mr. Chaplin was a competent authority to make the declarations on behalf of the Government and the tenure of the jahagir was to be governed by the terms of the sanad of Mr. Chaplin is in conformity with rule 1 of schedule B of Act XI of 1852. What Major Gordon purported to do in the concluding portion of his order was ~~fix~~ to make the te ms of Mr. Chaplin's sanad clear and the tenure of this sanad which was described in Marathi by the words" पुत्र पौत्र पारंपर्य " was translated by him in English as " continued in perpetuity to Raghunathrao and Krishanarao and their lineal male descendants".

7. After the plaintiff was adopted on 9-7-1942 by Laxmibai widow of Gururap Shriniwasrao one Raghunathrao a cousin of the late Gururao made an application to the Government on 16-6-43 requesting the Government not torecognise the adoption of the plaintiff on the ground that the Inam lands in the possession of the plaintiff were a portion of the Inam adjudgicated by the Inam Commissioner under Act XI of 1852 that the Inam was to be continued to the male descendents of Ramchandrarao the first British grantee

grantee or to the lineal male descendants of his br others that plaintiff was a stranger to the Heblikar family and was not a lineal male descendent as Laxmibai had not obtained prior sanction of the Government for his adoption and therefore ~~pr~~ prior ~~sanction~~ of the ~~Government~~ for his adoption the adoption ~~in suit~~ should not be recognised. He claimed that the lands should be entered in his name as the next heir of Gururao. Government had already passed a resolution (Ex 54) on 9-9-1940 in which they had refused to recognise certain ~~alienations~~ alienations of a part of this Inam and had ordered the resumption of the alienated lands by levy of full assessment. In that resolution it was pointed out that the Inam was one under Act XI of 1852 was a personal Inam and was to be continued in perpetuity to the holders and their lineal male descendants. As the Inam was not subjected to a summary settlement under Act II of 1863 though an offer was made to the Inamdar in 1870- the Inam was not transferable. According t o the decision of the Inam Commissioner the Inam was to be continued in perpetuity to the holders and their lineal descendants. It was further held that the words " to be continued..... to lineal male descendants " in the Inam Commissioner's ~~Inam~~ decision were not words indicative of general inheritance but were words of limitation and reliance was placed on the ruling in Perkash v. Rameshwar Nath (I. L. R. 31 Calcutta 561) in support of this view. When the petition of Raghunathrao Krishnarao Heblikar was received by Government they passed a resolution(Ex 55) on 15-12-1944. In the memorandum of the Commissioner S. D. which incorporated in the resolution, the Commissioner several rent free estates held the f amily of Heblikar. These were (1) the Hebli Saranjam (2) Patil-Kulkarni watan lands (3) Nadgir watan lands and (4) the suit ~~Inam~~ Inam starred Inam Lands at Talvai and Kurdapur. As regards the Inam lands at Talvai and Kurdapur, he recommended relying upon Government resolution (Ex 54) that the adopted son had no right to enjoy the lands as Inam and the lands would have to be resumed by the levy of full assessment. The Government accepted that view and held that the plaintiff

as the adopted son of Laxmibai had no right to enjoy as Inam the lands at Talvai and Kurdapur and that there should be levy of full assessment from the lands from 1-8-1944. The contents of this resolution were communicated to the plaintiff by the collector by his letter (Ex 48) dated 19--1-1945. It is this resolution (Ex 55) which is cancelled by the plaintiff in this suit and he claims a perpetual injunction against the Government from giving effect to it.

8. I have already detailed above the terms of Mr. Chaplin's sanad (Ex55) and the decision of the Assistant Inam Commissioner and of the Inam Commissioner (Ex 53& 52) The principal point therefore for consideration in this appeal is whether the view of the Government, that the plaintiff being adopted by Laxmibai without a previous sanction to the adoption from the Government is not lineal descendant of the original grantees is correct. Major Gorden the Inam Commissioner in his decision (Ex 52) held that Mr. Chaplin who issued that sanad Ex 57) was a competent authority to make the grant of the Inam and therefore in accordance with the rule 1 schedule B to Act XI of 1852 the devolution of the Inam was to be continued according to the terms of the sanad. The sanad (Ex57) merely stated that the grantees should enjoy the Jahagir पुत्र पौत्र वगैरे which may be translated as from father to son to grand so and soon." Major Gorden in his decision (Ex 52) purported to translate this phrase as to be continued in perpetuity to the grantees and their lineal male descendants." Assuming as is laid down in rule 2 of schedule to Act XI of 1852 and the rulings in Vasidev v Collector of Poona (10 B. H. C. R. 471) and Dattatray v Laxmana (33 Bom L.R. 1413) that the Inam Commissioner's decision is final as regards the interest created in the lands and is binding not only on the Inadar but upon the Government the question is whether ther is justification for the view of the Government that "lineal male descendants' meant only "natural sons and grandsons and so on" the original grantees and an adoption was

prohibited without the sanction of the Government. As the family of which the plaintiff claims to be a member pos esses several rent free estates such as Saranjam watan lands as also the Inam in dispute it will be necessary to bear in mind the difference in the mature of devolution of each of these estates. The saranjam estate would be governed by its own rules. The watan lands as was pointed out by the commissioner in his memerandum appended to Ex 55, were not settled under the Gordon settlement and the restriction as to adoption would not apply to them. As regards the personal inam lands of Talvai and Kurdapur the devolution of these lands will be governed by the terms of the sanad. (Ex 57) and the decision of the Commissioner (Ex 52) It cannot be disputed that both these documents do not in express terms prohibit anadoption nor do they require the previous sanction of the Government to any adoption. The rememberancer of the legal Affairs on whose advice the Government passed the resolution (Ex 54) was of the opinion that the words " to be continued to the lineal male descendants" were not words indicative of general inheritance but were words of limitation and that they did not suggest that the grant was absolute. In coming to this conclusion the Rememberancer of Legal Affairs relied upon the ruling in Perkash Lal v. Rameshwar Nath (I.L.R.31Calcutta X 561) That was a cas from Bengal. There was a deed of gift in that case known as Khairat Bishanprit made to a Brahmin byt ehe proprietor of a chota Nagpore Raj. It was provided that the grantee and his " al Aulad " were to possess and enjoy the property but the deed contained no words importing a right of alienation. It was held that, although the words "al alaud etymologically included female as well as male descendants yet according to a custom proved to have prevailed at the time of the grant and subsequently in that part of the country the words must be inerpreted to mean lineal male descendants only. It is therefore obvious that the decision in that particular case was based mainly upon a particular custom which was proved to have prevailed in that part of the country at the time of the grant. The case cannot be relied upon as layingdown a general proposition of law which may be applied to a case like the present one. Even as proposition of law, it is inconsistent

with the view taken by the Privy Council in two cases . One is Beniel v. The Secretary of State for India (I.L.R. 7 Cal 304 P.C.). In that case, there was a will in which the word 'Putra Pautradi Krame' were to be interpreted and it was hel that these words did not limit the succession to male descendants and would include females heirs of a female, where by law the estate would descend to such heirs. The other case is Mir Safdar Ali v. Mirja Maksudali (32 Bom L.R. 484). In that case there was an Inam grant which was to be continued rent-free to the claimant and h s lineal descendants in perpetuity. It was held that the expression 'lineal descendants' included descendants in the female line. The learned Civil Judge relied upon the ruling in Mahadev Sakharam v. The Secretary of State for India (1 Bom. L.R. 528) but that was an Inam settled under Act II of 1863. Under section 6 clauses (1) and (2) of Act II of 1863 a sanad issued under this Act stipulated that any ado tion would not be recognised by Courts as well as the Government . In that case, the claimant was brought into the family by an adoption which had not been recognised by the Government and therefore he was treated as a stranger and he could not in terms of the sanad claim to be a lineal male descendant of the grantee. In the present case, there are no words of restriction or limitation upon the power of the grantee or any male descend ant from having an adoption nor is a provision made that a valid adoption according to religous rites should have the previous consent of the Government. Both in the lower Court and in the appeal, it was argued for the plaintiff-appellant relying on Prantapsingh v. Sagarsinghji (21 Bom. L.R.496 PC) and Amarendra Man Singhji v. Satan Singhji (35 Bom. L.R. 855 P.C.) that an adopted son becomes, for all puproses, the son of his father and that his rights, unless curtailed by express texts, are in every respect, the same as those of a natural born son. At page 875 in Amarendra's case Their Lordships of the Privy Council expressed approval with the observations of Wallace J which are as follows :-

" The purpose of adoption is to perpetuate the line,

> and if the only son dies without leaving any one to perpetuate the line, there seems no good reason for restricting the power of his mother to perpetuate it in the only way she can by adopting a son to her own husband ".

For the defendant, reliance was placed on a passage in the Law of Saranjams and Inams by Phadnis, 1936 Edition, at page 117 which is as follows :-

> " Usually all inams adjudicated before the Acts (Acts II and VII of 1863) are restricted as to continuance to lineal male descendants alone. Succession by adoption or collateral succession is not recognised; the lands are inalienable. Therefore if the option is ~~exercised~~ exercised and the settlement is brought under the Acts then there will be no restriction as to the succession or transfer ".

But this statement itself cannot be accepted as laying down a binding proposition of law in absence of authority, in cases where there is a sanad available which has to be interpreted to determine the condition on which the Inam was to be continued and even the decision of the Inam Commissioner did not in express terms prohibit an adoption, as was done in sanads issued in the case of Inams subjected to summary settlements under Act II of 1863. The learned Civil Judge referred to a passage on page 545 of a publication known as ' A Hand-book for Revenue Officers ' published by A.K.Nairne, a retired Civil Servant. It is stated that :

> " In the case of an Inam not settled under the Summary settlement no adopted son will be recognised as having, by virtue of his adoption, a right to the possession of property of any kind held from the state unless the sanction of Government has been obtained previous to his adoption, and the regular nazar paid for it when such is payable ".

On ~~the~~ page 546 a resolution of Government dated 20-2-1849 is quoted and it is stated that the rules regarding adoptions apply to Inams which had not come under the summary settlement. At the instance of the plaintiff, the defendant had produced along with Ex.46 copies of documents referred to in the passage of Nairne's book. It appears that there was a letter addressed to the Revenue Commissioner S.D. on 20-2-1849. It refers to a draft of rules which had been approved for the guidance of officers in regulating the manner and degree in which adoptions and alienations of Inams etc. were to be recognised on behalf of the Government. Such a circular by the Government to its officers will not however bind strangers. Even the

author of the Hand-book in his preface to it stated that he has published the Hand-book on his own responsibility and that it must be understood that the book has no official authority. The passages in the Hand-book have no legal authority as the devolution of the Inam in dispute in this case is to be in accordance with the terms of the sanad (Ex.57) and the Inam Commissioner's decision (Ex.52) both of which do not in express terms prohibit an adoption. The plaintiff's contention that by his adoption he has become a lineal male descendant of the original grantee of the Inam, derives support from a recent ruling reported in Parvatibai v Anandrao (49 Bom. L.R.789). The appeal in the High Court curiously enough was against a decision in a suit in Satara District passed by Mr. Chitale who tried the suit. In that case, the head-note is as follows :-

> "A grant was evidenced by two documents, one in English and the other in Marathi. The English sanad provided that the annual allowance was confirmed hereditarily in the terms of the original sanad to the lineal male descendants of the original grantee. The expression "the lineal male descendants" purported to be the translation of "avaladikade" and "from generation to generation" was the translation of the word "Vanshaparampare" in the Marathi sanad. On the question whether the word "avaladikade" in the grant would include an adopted son :
> It was held that the sanad was a grant which was to run from one generation to generation and the word "Avalad" in the context should be taken to include the adopted son ".

Gajendragadkar J. who delivered the judgement referred to Vinadev v. Secretary of State (I. Bom.L.R.528) and observed that in that case the Court was dealing with a grant under which certain lands were to be continued so long as there would remain in existance any lineal male descendants of the original grantee and the Government had resefved the right to recognise an adoption and, as the claimant had been brought into the family by an unrecognised adoption, he was a stranger to the family. His Lordship observed at page 791 as follows :-

> " Under the Hindu Law there can be no doubt that ordinarily the position of an adopted son is for the purpose of succession exactly the same as that of a natural son, his rights and liabilities being identical with those of the natural son. The original grantor and the grantees were Hindus, and though the word " avalad " which is an Arabic word, has been used in this grant I do not think I would be justified in accepting Mr. Joshi's contention that the

> the word icludes both the male and the female - progeny of the grantee, it must exclude the adopted son. It seems to me on a reading of the - whole that it was grant which was to run from - generation to generation and the word "valad" in the context must I think, be taken to include the adopted son. Mr. Joshi has laid considerable emphasis upon the fact that in certain cases reference is made not only to the natural son but to the collateral and to the adopted sons in terms and in this connection he has referred us to such cases set out by Mr. Joglekar in his book at page 115. Is is quite true that in this grant no reference is made to an adopted son in terms. On the other hand there is no prohibition of adoption, nor any limitation as to the power of adoption such as prior - consent of the grantor or his heir. The absence of a reference to the adopted son cannot I think be - treated as ipso excluding the claim of an adopted son under this grant. That being my view I thinkt the lower Court appellate Court was right in holding that the adopted son was entitled to execute the decree."

In the present case, the operative words in the original grant (Ex.57) are " पुत्र पौत्र परंपरा " which would mean from father to son, son to grand-son and so on . The words in the Inam-Commissioner's decision (Ex.52) are "lineal male descendants" without express words of prohibition against an adoption or restricting the right to adopt or requiring previous sanction of the Government to an adoption. In view of the reasoning in Parvatibai v. Anandrao (49 Bom. L.R. 783) the decision of Government in Ex.55 that the plaintiff, though he was validly adopted son of Laxmibai, was a stranger to the family as the adoption of his had been made without the prior sanction of the Government, cannot be accepted as correct and the - plaintiff would be entitled to the declaration and the injunction sought.

3. There is one more point on which the appellant has challenged the decree of the lower Court. It is the finding of the learned Civil Judge on issue no.7. That issue had been framed after an application (Ex.42) was filed on behalf of the defendant and the plaintiff gave his reply by Ex.43. It was contended for the defendant that, though the suit was for an injunction, the pleader's fee should be calculated on the value of the subject-matter, which, according to the defendant, was the amount of the assessment that would be levied in consequence of the order of the Government. It is admitted that, after the order of the Government in Ex.55 was passed, assessment of the suit

suit lands has not yet been fixed. The plaintiff - challenges the right of the defendant to levy assessment on the suit lands. When the lands have not yet been assessed, the position is that the value of the subject matter of the suit cannot be ascertained. The learned Civil Judge proceeded to value the subject-matter for the purpose of assessing the pleader's fees on the amount of Rs.2500, as, in his view, the lands involved comprised 300 acres and, though they were not yet assessed, it appeared to him that the assessment of the lands could not be less than Rs.500. It is not clear how he arrived at the figure of Rs.2500/- for the purpose of assessing the value of the subject-matter for the purpose of the pleader's fee. The remarks of the learned Civil Judge on this point are as follows :-

> "The lands involved are about 300 acres, the lands are not assessed as yet. It appears to me that the assessment cannot be less than Rs.500 having regard to the lands in the villages in suit. However I think it would be reasonable to hold from the evidence on record that the claim should be valued at Rs.2500 for pleader's fees."

The only evidence on record is a purshis filed for the defendant that some lands were leased by the plaintiff for Rs.1700 and that the others were kept by him for his personal cultivation and that the value of the suit lands was more than Rs.15000. It was argued in the lower Court that the valuation of the value of the suit lands was irrelevant for the purpose of pleader's fees as the subject matter of the suit was the claim the exemption of assessment of the suit lands, that the assessment of the suit lands has not been fixed and therefore the value of the subject-matter could not be computed and hence the valuation of the plaintiff must prevail. In Rama V Balappa (XXII A.I.R. 1942 Bom 282) Beaumont C.J. held that the true rule to be derived from the terms of Appendix E of Appellate Sides Rules and the decisions upon it was that the advocate's fee should be computed on the subject-matter in dispute where that value could be ascertained by the Taxing Officer from materials on record. His Lordship further observed that in the case of an injunction it might frequently be

quite impossible to ascertain that value, for example, in a suit for an injunction to restrain interference with the enforcement levy of assessment is not made by the Government, the value of the subject-matter of the injunction cannot be determined both for the purpose of jurisdiction as well as for the pleader's fees fee. I therefore think that the learned Civil Judge was wrong in valuing the claim for pleader's fee at Rs.2500. The plaintiff's valuation must prevail.

10. The result is that the plaintiff succeeds in his appeal and the decree of the lower Court must be set aside.

Order.

The appeal is allowed. The plaintiff is granted a declaration that the defendant Government cannot recover the lands in suit by levy of full assessment. There should be a perpetual injunction against the defendant restraining them from claiming the said assessment from the plaintiff. The plaintiff should get the costs of the suit and of the appeal from the defendant who should bear their own throughout.

26th February 1949.

Sd/- R.D.Shinde.
District Judge.

55 LHF.

Submitted with ref. to A.S.'s note at page 7 ante.
The J.P.H.Ct. has forwarded unattested copy of the Judgment and is at page 17 of the Pbs.

17-12
A.S.

Dharwar Civil Suit No. 396/45 was filed by the Jaghirdar of Hebli for a declaration that Government had no right to resume by the levy of full assessment the starred Inam lands at the villages of Talvai and Kurdapur Taluka Dharwar and for a permanent injunction restraining Government from claiming the said assessment. The defence of the suit was sanctioned by G.R.L.D.No.5435 dated the 2nd August 1946. The suit was dismissed by the Trial Court on 17th November 1947. The unsuccessful plaintiff filed an appeal No. 339/47 against the lower Court's decision, the defence of which was sanctioned by G.R.L.D.No.3205 dated the 2nd April1948.

File No.
S.Dwr.6/46
p.77.
" 87.
"105

2. In Appeal the District Judge reversed the Lower Court's decree and allowed the appeal and granted the declaration and injunction sought by the plaintiff. As recommended by the D.G.P. and the Collector sanction was granted to the institution of a Second Appeal in the High Court by G.R.L.D.No.5649 dated the 20th May 1949.

p. 111 ibid

Go f 113

3. From the letter No. 2840 dated the 20th June 1949 from the Government Pleader, High Court, to the Collector of Dharwar, it appears that the Appeal could not be filed within the period of limitation because the Government Pleader, H.C. had not received certified copies of the decrees of the Appellate Court as well as the Trial Court and, therefore, in that letter he requested the Collector to forward the certified copies and also an affidavit showing the cause of the delay in sending the copies of the decrees. Having received certified copies of the decrees the Government Pleader, High Court, made Civil Application No.1109/1949 for excusing the delay in preferring the Second Appeal but the High Court was pleased to reject the application and the delay was not

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excused (vide Govt. Pleader,H.C.'s letter No.6254 dated the 21st November 1949 (page 1 ante). On 29th November 1949, the Govt. Pleader, H.C. was requested to explain the circumstances in which the delay occurred. His reply dated the 2nd December 1949 is at page 5 ante. The affidavit required by the Government Pleader H.C. was made by one A. S. Gunjikar, a clerk of the District Government Pleader and from a copy of his affidavit which is at page 9 ante it will be seen that he has tried to throw the blame for the delay upon the Office of the R.L.A. His excuse is that this Office endorsement forwarding a copy of G.R.L.D.5649 dated the 20th May 1949 instructed the District Government Pleader to forward direct to the Government Pleader, High Court, certified copies of each of the Judgments of the Trial Court and also the Appellate Court, but that as the copies of the Decrees were not mentioned in the endorsement the Office of the District Government Pleader did not apply for the same to the Appellate Court. This statement in the Affidavit is entirely misleading. The true facts are these.

4. The Judgment of the District Judge was delivered on 28th February 1948. Under Rules 129 and 130 read with Rule 140 of the Law Officers' Rules, it was the duty of the District Government Pleader to communicate to the R.L.A. the result of the appeal without any delay so as to reach him within 7 days from the date of the decision. It was also his duty to obtain with as little delay as possible one certified and two uncertified copies of the Court's judgment and of its decree and to forward the certified and one of the uncertified copies to the Collector as soon as it ~~is~~ was received from the Court. In this case, the decision of the District Court was not communicated to the R.L.A. by the Dist. Govt. Pleader within 7 days as required by ~~the~~ Rule 129, but It was only on the 2nd April 1949 that he sent to the R.L.A. through the Collector of Dharwar his letter No. 310 dated the 2nd April 1949 (page 15 ante)

recommending a Second Appeal and forwarding along with it only one uncertified copy of the judgment. The Collector forwarded that letter and the uncertified copy to the R.L.A. through the Commissioner, S.D. on 9th April 1949, and it was on 12th May 1949 that the Dist. Government Pleader's letter aforesaid with the uncertified copy of the judgment was received in the R.L.A.'s Office.

page 107 ibid

page 109 ibid

5. Till that date the result of the Appeal was not known to the R.L.A. ~~which~~ although had been decided as early as 28th February 1949. On 16th May 1949 I took the R.L.A.'s orders for preferring a Second Appeal and the Government resolution dated the 20th May 1949 sanctioning the institution of the Appeal was issued to all concerned including the Government Pleader H.C. and the District Government Pleader on the same day. Now, the 90 days' period of limitation would have expired on the 29th May 1949, but as that was during the Summer Vacation, Appeal could have been instituted on the opening day of the High Court which was in the second or third week of June. The Dist. Govt. Pleader's clerk says in his affidavit that the endorsement below the resolution only asks the Dist. Government Pleader to send certified copies of the judgment but not of the decrees. But Mr. B. G. Thakore, the Asst. Government Pleader, High Court, says in his letter (page 5 ante) that on receipt of the Government Resolution, the office of the Govt. Pleader, High Court, sent a letter dated the 23rd May 1949 bearing No. 2511 to the Collector of Dharwar asking him to send certified copies of both the judgments and both the decrees.

" 110 ibid

That letter must have reached the Collector in the ordinary course within 2 to 3 days and it is reasonable to suppose that he must have given the necessary instructions to the Dist. Govt. Pleader, to obtain the necessary copies. Yet the Dist. Government Pleader sent on 8th June 1949 only certified copies of the Judgments which were received by the G.P.H.C. on 13th June 1949. On 20th June 1949, the Govt. Pleader' H.C. sent another Express letter calling for certified copies of the decrees but they were not received till the 30th June 1949. In his affidavit the D.G.P.'s clerk refers only to the second letter from the G.P.H.C. dated the 20th June 1949.

6. I submit that the blame for this unfortunate result rests entirely upon the office of the District Government Pleader. There was ample time even on receipt of the Government Resolution dated the 20th May 1949 to apply for and obtain certified copies of the judgments and the decrees and to send them to the Government Pleader, High Court, to enable him to file the appeal on the opening day. The excuse that the endorsement below the Resolution required only the copies of the judgments and not the decrees is hardly tenable. The Dist. Govt. Pleader's Office knew that it had not forwarded the certified copies of either the judgments or the Decrees. A senior member of the Bar like the Dist. Govt. Pleader is expected to know that it is necessary to file certified copies of judgments and decrees along with the memorandum of Appeal. It is, therefore, submitted that the District Government Pleader's office is wrong in blaming the R.L.A.'s Office for the delay in filing the Appeal.

7. So far as the merits of the case are concerned, the only question in this suit was

whether Government's view that lineal male descendants meant only natural sons and grandsons of the original grantee and not adopted sons, was correct. The plaintiff as the adopted son of the widow of the last Inamdar claimed to hold the lands free of assessment under the terms of the Sanad granted to the original grantee. These lands were adjudicated by the Inam Commissioner under ACT XI of 1852 and were continued in perpetuity to the lineal male descendants of the original grantees. The plaintiff who was adopted in the Inamdar family claimed to hold the lands by virtue of that adoption but by Government Resolution Revenue Department 861/39 dated the 15th December 1944 Government ordered that the plaintiff as the adopted son of the widow had no right to enjoy as inam the suit lands in the two villages and that they should be resumed by the levy of full assessment with effect from 1st July 1949. It was against these orders that the suit was filed. The learned Dist. Judge upon a review of all the authorities and upon a true construction of the grant held that there was no justification to hold that the words 'पुत्र पौत्र पारंपर्य' which were translated by the Inam Commissioner as "lineal male descendants of the original grantee" excluded an adopted son. The learned District Judge disagreed with the R.L.A. who had held that the words "to be continued to the lineal male descendants" were not words indicative of general inheritance but were words of limitation and that they did not suggest that the grant was absolute. The cases relied on by the R.L.A. in support of that opinion were held not applicable to the

facts of that case. This was the only point of law involved in this case and on the whole the judgment appears to be reasonable. The effect is that the orders passed in the Government resolution aforesaid will not survive and the plaintiff will be entitled to hold the lands free of assessment under the terms of the original grant.

RW
21/12/49

RKA Ch 22

Seeing Rob

The mistake - whoever may be responsible - is indeed unfortunate The initial mistake occurred in our office; but it could have been easily set right if the DGP's clerk had a little commonsense to understand That a copies of the decrees were equally essential for filing an appeal. We may write to the DGP expressing Govt's disapproval of the conduct of his clerk.

RC 22/12

R.L.A

The DGP's office had no reason whatsoever to ignore the letter of the Govt High Court dated 23rd May 1949 whereby a certified copy of the decree was specifically called for. The letter clearly shows that both letter and spirit only

K.256. Rs.as.ps. 61

Copying and comparing charges.0--6-0(Fa.1). Typed by Shri.D.T.Patwardhan.
Paper charges. 0--0-3 Examined by:-
---------- Read by:-
Total Rs...0--6-3

Total annas six and pies three only.

Superintendent, Decree Department.
30 -4-1951.

Copy applied for on 20-4-1951
Copy ready on 30-4-1951
Copy delivered on 27-7-1951
Sent by V. P. P. Regd. Post

Assistant Superintendent.

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of.

The Province of Bombay
(Original Defendant-Appellant).. Applicant.

Versus

Raghavendra alias Shrinivas Gururao
Jahagirdar
(Original Plaintiff-Respondent)... Opponent.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Being Civil Application No. 1109 of 1949 for excuse of delay in filing Second Appeal St.No. 5368 of 1949.

Mr.B.G.Thakor, Government Pleader for the Applicant.

Coram:- Bavdekar J.

Reject.

The 31st day of August 1949.

True Copy

For Deputy Registrar,

The 30 day of April 1951.

63 [illegible]

Suits.
Dharwar.
For a declaration that Government has no right to resume by levy of full assment the starred Inam Lands at the villages of Talvai and Kurdapur.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 14533

Bombay Castle, 12th September 1951.

READ Government Resolution, Legal Department, No. 5649, dated the 20th May 1949.

Letter from the Government Pleader, High Court, Bombay, dated the 21st November 1949, stating that Civil Application in the suit noted in the margin was decided by the High Court, Bombay on the 31st August 1949, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Dharwar. Civil Suit No. 396 of 1945 Raghavendra alias Shrinivas) Plaintiff; Gururao Jahagirdar of Hubli) Vs. The Province of Bombay - Defendant Claim - Rs. 205/-

"Civil Application rejected (Delay not excused)".

Letter from the Government Pleader, High Court, Bombay, No.8063 dated the 21st August 1951, forwarding uncertified copies of the order and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original R. T. Katarki

R. T. Katarki,
Deputy Secretary to Governmer

To
The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Government Pleader, High Court, Bombay.

8C. 7.9.51. Submitted for sign
12/9
D-J:

issued,
12/9.

Subtd after issue.
file in [illegible]